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Products Co. v. Park Rubber Co., 749 F.2d 707, 715-16 [223 USPQ 1264, 1270] (Fed. Cir. 1984).

In the present case Applicant respectfully point out that nowhere does Forman teach or suggest a medical balloon having all of the features of the instant claims. Specifically, Forman fails to teach or suggest that at least one segment of the balloon has a chemically etched or ground surface as required by independent claims 27 and 42. While Forman asserts that exposure of polymeric materials to excimer laser energy is believed to have photo-chemical aspects (see Forman column 4, lines 5-7), one of ordinary skill in the art will recognize that both chemical etching and grinding are not processes that are photo-chemical in nature.

Thus, because the present claims are not directed to the use of excimer laser energy or any other process having "photo-chemical" aspects, it is clear that Forman fails to anticipate the instant claims. In addition, because there is no suggestion in Forman to utilize grinding or chemically etching to affect a balloon segment as in the instant claims, Forman fails to render the instant claims obvious. As a result, the rejection is traversed.

In regard to the rejection to claim 30, 42 and 46, independent claim 30 is directed to a medical balloon which when inflated to a desired pressure has a constant wall thickness over substantially the entire length of the balloon. Forman does not disclose a balloon which when inflated to a desired pressure has a constant wall thickness over substantially the entire length of the balloon. While Forman does describe in column 4, lines 20-24, a method wherein after a balloon is inflated excimer laser is directed to the balloon cones there is nothing in Forman which teaches that when the balloon is inflated the balloon has a constant wall thickness over substantially the entire length of the balloon as stated in the instant claims.

Turning to independent claim 42, the official action states that Forman discloses a process of removing material from a balloon by laser ablation, which can be considered as a chemical-etching process.

As discussed above, laser ablation as described in Forman may be considered to have "photo-chemical" aspects, however, there is nothing in Forman which teaches or suggests to

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one of ordinary skill that laser ablation is equivalent to chemical etching or grinding. In light of the above, the rejection is respectfully traversed.

Turning to the rejection asserted against claims 33-39, in the official action Forman is said to disclose the invention of the instant claims. The official action asserts that the removal of material from a balloon by laser ablation as described in Forman can be considered as a chemical-etching process. The action further asserts that Forman describes a balloon having its distal waist wall thickness less than the thickness of its cone wall portions and less than the thickness of body portion as well.

In response, Applicant once again asserts that despite the description of the Forman laser ablation process as having "photo-chemical" aspects there is nothing in Forman that teaches or suggests that a balloon can be provided with a ground or chemically etched surface. Furthermore, as supported in the included supporting Declaration, one of ordinary skill in the art would not consider the processes of chemical etching and/or grinding to have such photo-chemical aspects or be equivalent to laser ablation. The rejection is respectfully traversed.

As to the rejection to the various dependent claims, claims 28-29 depend from claim 27, claims 34-39 and 41 depend from claim 33, and claims 43 and 45-46 depend from claim 42. Applicant notes that the independent claims 27, 33, and 42 all describe a balloon of which a portion is ground or chemically etched. As has been repeatedly discussed above, there is nothing in the Forman reference that teaches or suggests affecting a portion of a balloon by grinding or chemically etching. As a result, for the same reasons that the rejections to the independent claims 27, 33, and 42 must fail, the rejections to the respective dependent claims 28-29, 34-39 and 41, and 43, 45-46 must also fail.

Claim rejections – 35 USC § 103

In the Final Office Action claims 40 and 44 were rejected under §103(a) as being obvious over Forman and U.S. 6,258,099 to Mareiro et al (Mareiro).

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Applicants have cancelled claims 40 and 44 from the Application without prejudice or disclaimer. As a result, the rejection is respectfully overcome.

FORMALITIES

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

CONCLUSION

In view of the foregoing it is believed that the present application, with claims 27-30 and 33-39, 41-43 and 45-46 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,
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